

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 26**

CAE USA Inc.
Employer

and

**Cases 26-RC-8401
26-UC-196**

**Little Rock Association of Instructors,
Technicians, and Support Personnel**
Petitioner, Case 26-RC-8041
Intervenor, Case 26-UC-196

**International Association of Machinists
and Aerospace Workers, AFL-CIO**
Petitioner/Union, Case 26-UC-196
Intervenor, Case 26-RC-8041

**REGIONAL DIRECTOR'S DECISION AND CLARIFICATION OF
BARGAINING UNIT AND DECISION AND DIRECTION OF ELECTION**

The Employer, CAE USA Inc., performs training services and maintenance work related to training individuals in the operation of C-130 cargo aircraft. At the Little Rock Air Force Base, the Employer performs work on two programs. One program is for the older C-130 aircraft, known as the Aircrew Training System (ATS), and the other program is for the newer J-model of the C-130, known as JMATS. The Little Rock Association of Instructors, Technicians, and Support Personnel (the Association) filed a petition to be certified to represent a unit of 18 of the Employer's instructors, technicians, and support personnel that work in the JMATS program and are currently covered by a contract between the Employer and the Association. Thereafter, the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM) filed a petition

seeking to add those same 18 employees to a unit of the Employer's employees that it currently represents who perform work in the ATS program.

The first issue presented in these cases is whether all the disputed classifications should be included in the IAM unit. If not and an election is directed, it must be decided whether: (a) the Association is a labor organization that would be on the ballot; (b) instructors are professional employees who should have the right to a self-determination election; (c) the lead pilot instructor is a 2(11) supervisor; and (d) the scheduler/librarian has a community of interest with other unit employees.

The Employer and the Association oppose including any JMATS employees in the existing IAM unit because (1) the Employer and the Association already have a collective-bargaining agreement covering those employees and (2) the training regimen for the J model of the C-130 is different from that used for the earlier C-130 models. The IAM contends that all the classifications should be included in its existing bargaining unit

Following a hearing before a hearing officer of the Board, the parties filed briefs with me. As explained below, I find that it is appropriate to include the five simulator technicians and the one material coordinator in the existing IAM unit because they are performing the same basic functions historically performed by the members of the existing IAM bargaining unit. However, I do not find it is appropriate to include the pilot instructors, loadmaster instructors, or scheduler/librarian in the existing IAM unit since their functions are not now being performed by employees of the Employer in the IAM unit and they do not have a

sufficiently strong community of interest with the employees in the IAM unit. I have determined that the Association is a labor organization and I am directing an election in a unit containing the pilot instructors and loadmaster instructors. Because I have concluded that the instructors are not professional employees, a self-determination election is not required. Finally, I have decided to have both the lead pilot instructor and the scheduler/librarian vote subject to challenge because the evidence is not sufficient to determine whether those positions should be included in the unit.

I. OVERVIEW OF OPERATIONS AT THE LITTLE ROCK AIR FORCE BASE

The United States Air Force has contracts with Lockheed Martin to provide training at the Little Rock Air Force Base for operation of both the older C-130 aircraft and the newer C-130 J model. The J model differs from earlier versions of the C-130 in that it has an improved and enhanced cargo system, has a two-person crew rather than the four-person crew, and has a computerized screen rather than the analog instrumentalities of other models.

Lockheed Martin, in turn, has contracted with the Employer and with another contractor, RAMAC, to provide the training at the Little Rock Air Force Base.¹ For the C-130 ATS program, the Employer has provided technician logistics, including simulator maintenance, and a portion of the engineering services, but has not been responsible for pilot or loadmaster instruction or courseware support, while RAMAC has provided the pilot and loadmaster instruction. For the JMATS program, the Employer will provide the training

¹ I take administrative notice of the Regional Director's Decision and Clarification of Bargaining Unit in RAMAC, 26-UC-195 concerning certain facts that relate to the instant matter.

services, including the pilot and loadmaster instruction, and related simulator maintenance and engineering services while RAMAC will provide the courseware. The IAM currently represents some employees of both employers at the Little Rock facility.

In the ATS program at the Little Rock Air Force Base, the Employer currently employs employees in the following job classifications: material coordinator-site, material coordinator-program, technical writer, simulator technician I, simulator technician II, simulator technician III, TSSC Simulator Engineer (non-degree), and TSSC Simulator Engineer (degree). These employees are currently represented by the IAM.

In the JMATS program at the Little Rock Air Force Base, the Employer currently employs pilot instructors, loadmaster instructors, material coordinator, and simulator technicians. These employees, as well as the scheduler/librarian scheduled to start shortly after the hearing, are covered by the collective-bargaining agreement between the Employer and the Association.

The Employer's director of C-130 training for both the JMATS and ATS programs is Fred Ross, who is located in Tampa, Florida. The program manager at the Little Rock facility for both the C-130 ATS program and the JMATS program is Roberta Jameson. Chris Carr is the maintenance manager of the C-130 ATS program and Bob McAllister is the maintenance manager of JMATS.

The JMATS employees working for the Employer at Little Rock are in a recently completed facility—Building 1231. The ATS employees work in Building 1230. Both buildings have simulators, maintenance offices, instructor offices,

and classrooms. The buildings are separated by a road or alleyway. One witness described the distance between the two buildings as about 25 feet. In the future, the JMATS facility will have a security system that requires an individual to be escorted or have security clearance to enter. At the present time, all individuals on the JMATS program have the same security clearance as employees on the ATS program.

II. UNIT CLARIFICATION ISSUE

A. Analytical Framework

Unit clarification is appropriate to clarify an existing unit to include newly created job classifications. The Board considers whether the newly created job classifications perform basically the same functions as those historically performed by the members of the existing bargaining unit. See, *Developmental Disabilities Institute*, 334 NLRB 1166, 1168 (2001); *Premcor, Inc.*, 333 NLRB 1365 (2001).

Unit clarification may also be appropriate under an accretion type analysis. Using an accretion analysis, the Board considers whether two groups of employees have a group or separate identity and whether the additional group of employees share an overwhelming community of interest with the preexisting unit. *Compact Video Services*, 284 NLRB 117, 119 (1987) and cases cited there. The Board has followed a restrictive policy in finding accretions to existing units. *Id.*

B. Bargaining History

The bargaining history involving the Employer includes employees in two units: those in the existing IAM unit and those who are in the Association's

bargaining unit. Employees in the existing IAM unit have been performing C-130 ATS work since at least 1998. In 1998, Raytheon Systems had the contract for the training and maintenance work and employed the unit employees when IAM was certified in Case 26-RC-8022. On January 1, 2000, Reflectone Training Systems assumed the bargaining obligations in the contract between Raytheon and the IAM. In about August 2001, Reflectone became known as CAE USA, Inc., the Employer here, and signed a contract with the IAM describing the bargaining unit as: all regular full-time employees who have completed their probation period, material coordinators, technical writers, simulator technicians, TSSC Simulator Engineers, and other specialties that may be employed by the Employer with regard to the C-130 ATS Training system program at Little Rock Air Force Base excluding all other employees, including office clerical employees, professional employees, and managers.

On July 17, 2003, the Employer and IAM signed a successor contract that is effective until August 20, 2006. Although the IAM proposed including the JMATS personnel in that contract, the Employer declined and the current contract does not mention JMATS employees.

Regarding the Association's bargaining unit, the Employer agreed to recognize the Association via letter dated August 25, 2003. This letter was in response to a letter dated August 22, signed by four employees, seeking recognition of the Association. At the time, the Employer employed about six employees. Thereafter, the Employer and Association entered into contract negotiations via teleconference between Association members then located at

Keesler Air Force Base in Biloxi, Mississippi and the Employer's offices in Tampa. They reached agreement on a contract that is effective, as amended, from September 12, 2003 through September 30, 2006. The bargaining unit described in that contract includes all simulator instructors, technicians, and support personnel employed by the Employer with regard to the C-130J MATS program at the Little Rock Air Force Base. The contract contains a grievance procedure, a wage schedule, benefit plans, and work conditions such as layoffs, promotions, seniority, hours of work, overtime, attendance policy, vacation and leave policy. The Association has a set of by-laws, but they have not been adopted yet.

In addition to the bargaining units of the Employer's employees, the IAM also represents a unit of employees of RAMAC² performing ATS and JMATS work at the Little Rock Air Force Base. This unit includes the ATS pilot instructors and loadmaster instructors.³

C. Job Classifications and Functions

The IAM seeks to clarify its unit of material coordinators, simulator technicians, technical writers, TSSC simulator engineers and other specialties

² In the transcript here, the RAMAC employees are referred to as Lockheed employees, perhaps because RAMAC is a subsidiary of Lockheed.

³ In Case 26-UC-195, the IAM unit of RAMAC employees was clarified to include the following JMATS employees: librarian, computer based training (CBT) specialist, instructor subject matter (SME), loadmaster SME, graphic artist and training analyst. The instructor SME and loadmaster SME are involved only in developing courseware for the JMATS training program and will not perform JMATS training.

employed by the Employer in the ATS training program to include the JMATS classifications covered by the Association's contract with the Employer. Those classifications include the material coordinator, the simulator technicians, the instructors, and the scheduler/librarian. To determine if clarification is appropriate, I will compare the job classifications and functions in the ATS and JMATS training programs.

1. Material Coordinators

In the JMATS program, the Employer has one material coordinator, who is responsible for procurement activity for maintaining the C-130J model flight simulators. In the ATS program, the Employer has two material coordinators who order and receive parts for the ATS program, including the ATS simulators. One ATS material coordinator handles capital equipment as well as parts and office equipment, while the other ATS material coordinator handles site-to-site transfer of parts. The parts for the ATS and JMATS simulators are not interchangeable because the two simulators are different in design and in operation in accordance with the differences with the actual C-130 model aircraft. The parts for each program are stored in the building where the program is located rather than in a warehouse.

The IAM and Association contracts indicate that the current wage rate for one of the ATS material coordinators, the ATS material coordinator-program, is the same as the wage rate of the JMATS material coordinator. The current wage rate for the other ATS material coordinator, the ATS material coordinator-site, is about a dollar an hour less. The job description for the JMATS material coordinator is very similar to the job description for the ATS material coordinator.

2. Simulator Technicians

Five simulator technicians work in the JMATS program. They include one technician III lead, one technician III, and three technician IIs. The record does not state the number of simulator technicians in the ATS program. The degree of expertise and knowledge is the basis for the separation into three levels of technicians.

The JMATS simulator technicians are responsible for maintaining the operation and maintenance of the C-130J model simulators while the ATS simulator technicians are responsible for maintaining the operation and maintenance of the C-130E and H model simulators. The avionics are different on the various plane models and thus are different on the simulators. The ATS simulator is more of a hardware simulator using older technology. The JMATS technicians use more firmware software in the simulators and thus an ATS technician would have to be trained on the newer technology. Two ATS simulator technician IIIs transferred to positions as JMATS simulator technicians pursuant to job postings in November 2003 and were then trained on the JMATS technology. The ATS and JMATS technicians use similar tools and, on occasion, the JMATS technicians borrow tools from the ATS technicians. The current hourly wage rates for the ATS and JMATS simulator technicians are within a few cents of each other. The job posting for the JMATS simulator technician position is very similar to the posting for an ATS simulator technician as the ATS simulator technicians perform basically the same job as the JMATS simulator technicians.

ATS technicians and material coordinators work and have a break area in a separate building from their counterparts in the JMATS program. The ATS and JMATS programs have the same program manger, Roberta Jameson, but have different maintenance managers. However, the JMATS maintenance manager, Bob McAllister, transferred to that position from a position as an ATS manager. Another JMATS mananger, Logistics Manager Shelley Orr, also transferred from a position as an ATS manager.

3. Pilot Instructors and Loadmaster Instructors

Currently, the Employer employs one lead pilot instructor, seven pilot instructors, and three loadmaster instructors in the JMATS program. The Employer employs no ATS pilot instructors or loadmaster instructors since RAMAC performs that function.⁴

The JMATS pilot instructors teach students how to pilot a C-130 J model aircraft utilizing both the classroom and the simulator. Loadmaster instructors teach students about loading equipment onto the back end of the fuselage of a C-130 J aircraft. At the time of the hearing, the Employer's JMATS instructors had not yet begun instructing students other than other JMATS instructors. The first class of students, Air Force pilots, was scheduled to begin March 1, 2004.

4. Scheduler/Librarian

At the time of the hearing, the Employer did not employ anyone in the scheduler/librarian position. But, the record indicates that an individual had been hired for that position and was scheduled to begin work on March 1, 2004. The

⁴ The ATS pilot instructors and loadmaster instructors are represented by the IAM, but are part of a different bargaining unit with a different employer, RAMAC.

duties of the scheduler/librarian will include interacting with students regarding classroom and simulator time. The Employer's contract with the IAM does not have a similar job classification. An employee from RAMAC performs that job task for ATS training.

D. Analysis

The individuals employed by the Employer as material coordinator and simulator technicians in the JMATS program work in the same or similar classifications as those in the IAM unit and perform the same basic functions and are paid similarly as employees in the ATS program. In this regard, the JMATS material coordinator is involved in the procurement of replacement parts for the C-130J simulator and the ATS material coordinators are involved in the procurement of replacement parts for the C-130E and H simulators. While the parts may vary due to the differences in the two simulators, the function being performed by the material coordinators is the same.

This is also true for the simulator technicians who are responsible for maintaining the simulators. While the design and avionics vary between the newer C-130J model simulators maintained by the JMATS simulator technicians and the older model simulators maintained by the ATS simulator technicians, the function of maintaining the operational integrity of the simulators using similar tools is the same. Nor are the differences between the simulators significant enough to preclude an ATS technician from learning how to maintain the JMATS simulators as evidenced by the transfer and training of two ATS technicians to be JMATS technicians.

Since the JMATS material coordinator and the simulator technicians are performing basically the same functions as those historically performed by the members of the existing IAM bargaining unit, I find that the IAM unit should be clarified to include the JMATS employees in the classifications of material coordinator and simulator technician. *Developmental Disabilities Institute*, 334 NLRB 1166, 1168 (2001); *Premcor, Inc.*, 333 NLRB 1365 (2001).

In contrast, the functions of pilot instructor, loadmaster instructor and scheduler/librarian have not been historically performed by any employee of the Employer in the IAM unit. Rather, those functions have been performed by employees of another employer, RAMAC. Accordingly, it is not appropriate to add those classifications under the rationale of *Developmental Disabilities*. Nor is accretion of the JMATS pilot instructors, loadmaster instructors and scheduler/librarian into the ATS unit appropriate under a traditional accretion analysis because to do so in this case would disenfranchise these employees while inserting them into a unit with which they have minimal community of interest. *Melbert Jewelry Co., Inc.*, 180 NLRB 107, 109 (1969).

In arguing that the IAM unit should not be clarified, the Employer's brief does not distinguish *Developmental Disabilities Institute*, supra, or *Premcor, Inc.*, supra. Rather, the Employer contends that there is a lack of community of interest, no functional program integration, and no interchange between the JMATS and ATS programs. Specifically, the Employer contends that the two training programs are separate as evidenced by separate buildings, coursework, and parts, and that there is minimal interaction between the employees in those

two programs. In support of these contentions the Employer relies on *Archer Daniels Midland Co*, 333 NLRB 673 (2001). I am not persuaded by these arguments. As set forth above, there is no indication that the actual job duties of the JMATS material coordinator and simulator technicians are any different from those performed by the ATS material coordinators and simulator technicians. This distinguishes the instant matter from the facts in *Archer Daniels Midland* because here the same work is being performed by unit employees while in *Archer Daniels Midland* the work was not similar to that performed by unit employees.

Another issue raised by the Employer is the lapse in time between the signing of the latest contract with the IAM in July and the filing of the IAM grievance in November seeking to include the JMATS employees. Citing *Edison Sault Electric Company*, 313 NLRB 753 (1994), the Employer asserts that the IAM cannot use the UC vehicle to change the composition of the bargaining unit during the contract term. In this case, the IAM sought to include the JMATS training personnel during contract negotiations, but signed the contract in July without including them. However, the Employer ignores the fact that it signed the contract with the IAM before it ever hired any JMATS employees. The record indicates that the Employer hired the first JMATS employee on July 21, four days after the contract with the IAM became effective. It was the transfer of an ATS technician in November to be a JMATS technician that alerted the IAM that employees were being hired for the JMATS program and prompted the IAM to file the November 12 grievance. The material coordinator position was not

posted until November 6 and that employee started work sometime in 2004.⁵

Accordingly, I find that *Edison Sault Electric Company*, supra, does not preclude clarification of the simulator technicians and material coordinator into the IAM unit.

While not specifically argued by the parties, it could be asserted that the Association's contract bars clarification of employees into the IAM unit. I note that a union, the Association in this case, can file a representation petition in order to secure whatever protection is afforded under Section 8(b)(4) of the Act as well as the benefits of the one-year certification rule in the event of a raid by a competing union even though the union has been voluntarily recognized and has a collective-bargaining agreement with the Employer. *General Box Co.*, 82 NLRB 678 (1949); *General Dynamics Corp.*, 148 NLRB 338 (1964). Once an RC petition is filed under the *General Box* contract bar exception, it is treated by the Board the same as any other petition. Accordingly, I find the contract between the Employer and the Association does not bar either the UC petition or the RC petition in this matter.⁶

III. REPRESENTATION PETITION

A. Analytical Framework

Having determined that the simulator technicians and material coordinator should be clarified into the IAM unit, it remains to be decided if an election should

⁵ I note that his name does not appear on a roster of employees dated 1/29/2004 and the Employer's director testified he thought the employee was to start work sometime in February.

⁶ I take administrative notice that a charge has been filed in Case 26-CA-21497 alleging the Employer violated Section 8(a)(2) of the Act, but find it unnecessary to hold these cases in abeyance since I find the contract would not be a bar even assuming it is found to be lawful.

be directed in a unit including the other JMATS job classifications in dispute: pilot instructors, loadmaster instructors, and the scheduler/librarian. To determine if a group of employees have a community of interest sufficient to include them in a bargaining unit several factors are considered including: the degree of functional integration, common supervision, nature of employee skills and function, interchange among employees, and history of collective bargaining. See generally, *United States Steel Corp.*, 192 NLRB 58 (1971).

If an election is to be directed to include the pilot instructors and loadmaster instructors with non-professional employees, it is also necessary to decide if, as the Employer contends, the pilot instructors and loadmaster instructors are professional employees within the meaning of Section 2(12) of the Act who should be accorded a self-determination election. When considering the issue of whether an individual is a professional employee, the Board has found that it is the work rather than individual qualifications that are controlling, but education and experience of employees are relevant factors to consider in determining the nature of the work. *Western Electric Co., Inc.*, 126 NLRB 1346, 1348-49 (1960).

B. Job Classifications and Functions

1. Pilot Instructors and Loadmaster Instructors

The Employer employs seven pilot instructors, three loadmaster instructors, and one lead pilot instructor on the JMATS program. Pilot instructors are responsible for teaching students how to pilot a C-130 J model aircraft. Pilot instructors are responsible for simulation and classroom/academic-type instruction for the C-130 JMATS training program. A loadmaster is responsible

for loading the back end of a C-130 aircraft. Loadmaster instructors are responsible for classroom academic instruction as well as working on the back end of the fuselage trainer for the C-130 JMATS training program.

All but two of the JMATS pilot instructors held the rank of lieutenant colonel in the United States Air Force prior to becoming employed by the Employer. The two remaining instructors held the rank of major. One witness testified that he had instructor training in the Air Force as opposed to a university degree in education and that he was hired as a pilot instructor because of his pilot's experience not because of his education. This witness further noted that in order to be promoted past the rank of major in the Air Force, an individual must have a master's degree in some field. His master's degree is in public administration. Pilot instructors are not required to have a teacher's certificate nor a pilot's license from the state of Arkansas.

At the time of the hearing, neither a pilot nor loadmaster instructor had taught any Air Force students. Rather, they had only taught instructor hirees. The first class of students was scheduled to begin instruction on March 1 in the JMATS training program. The students coming into the JMATS training program have already graduated from initial pilot training with the Air Force. The purpose of the JMATS training is to instruct students on piloting or loading the C-130J model aircraft.

According to the testimony of one pilot instructor, the lead pilot instructor distributes schedules to pilot instructors and informs them what they will be doing each day. The individual occupying the job classification of lead pilot instructor

also taught the first three JMATS pilot instructors on the C-130J model simulator at Keesler Air Force Base in July 2003. Article 22, Section 3 of the contract between the Employer and the Association provides that a lead is selected by the Employer and receives a lead differential pay of an additional ten percent. That section of the contract also provides that the lead: is required to assist the Site Manager or Maintenance Manager in scheduling work; is responsible for instructing and aiding a group of employees, and/or supervising a maintenance shift; may be required to perform evaluations; assists the Site Manager or Maintenance Manager in maintaining a “smooth flow of work”; reports to the Site Manager or Maintenance Manager the reasons for failing to maintain the flow of work; and is to replace the Site Manager or Maintenance Manager temporarily in case of absence.

2. Scheduler/Librarian

At the time of the hearing, no one occupied the job classification of scheduler/librarian, but the individual hired for that position was supposed to begin work on March 1. The scheduler/librarian will schedule students for simulation time and provide courseware for the students and will work in the same building as the JMATS instructors. The record does not provide other information regarding this position and the extent of contact with the instructors.

C. Analysis

I find that the pilot instructors and the loadmaster instructors share a community of interest. Their job functions are similar in that they both use the classroom and simulator to teach students how to pilot or load a C-130J model aircraft. They also interact with the students and between themselves. In

addition, although for a relatively brief period of time, they have both been included in the same bargaining unit – the Association unit.

I do not, however, find that pilot instructors and loadmaster instructors are professional employees as the Employer contends. The Board's decision in *Hawthorne School of Aeronautics*, 98 NLRB 1098 (1952) is on point. In *Hawthorne*, the Board found that pilot instructors who taught Air Force cadets how to fly a plane were not professional employees. The Board reasoned that the pilot instructors were only concerned with the instruction of students and the instructors had no particular type of college degree. Here too, the pilot and loadmaster instructors are only concerned with teaching students and they do not have to have any specialized college degree to perform that task.

As for the status of lead pilot instructor, I find that he should vote by a challenge ballot. Although no party took the position that this individual is a supervisor under Section 2(11) of the Act, I find there is sufficient evidence in the record concerning his duties that raises the concern that he might be a supervisor within the meaning of the Act. I note specifically that the record indicates he may assign work and schedules to other instructors, is paid more for his duties as a lead instructor, is selected by the Employer to perform the duties of a lead instructor, can replace a manger, and may prepare employee evaluations. He is also responsible for facilitating the flow of work and reporting to his manager any failure to achieve a smooth flow of work.

I also find that the employee occupying the scheduler/librarian job classification should vote by a challenge ballot. Inasmuch as no employee held

this position at the time of the hearing, there is simply insufficient evidence to conclude whether or not the scheduler/librarian has a community of interest with the pilot instructors and loadmaster instructors.

As to whether the Association contract is a bar to an election, as discussed above, the Association filed the RC petition after recognition by the Employer and negotiation of a contract with the Employer. Since the petition was filed by the labor organization that was recognized and is a party to that contract, that contract does not act as a bar to an election. See, *General Box Co.*, supra, and *General Dynamics Corp.*, supra.

Since I have determined that the pilot instructors and loadmaster instructors constitute an appropriate unit and the parties did not stipulate to the Section 2(5) status of the Association, the issue of whether the Association constitutes a union under Section 2(5) of the Act needs to be explored.

To establish labor organization status under Section 2(5) of the Act, only three requirements have to be met. First, the entity must be an organization or group of any kind. Second, employees must participate in the organization. Third, the organization must exist, at least in part, for dealing with employers concerning such matters as wages, hours, or working conditions. These conditions are liberally interpreted. *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959); *South Nassau Communities Hospital*, 247 NLRB 527, 529-530 (1980).

I find that the Association meets these three requirements. The record establishes that the Association constitutes a group and the employees participate in the group. The contract between the Employer and the Association

clearly concerns matters of wages, hours, and working conditions such as wages, hours of work, overtime, layoff, seniority, and benefits.

IV. CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in these cases.
3. The IAM proposes to amend the certification to include the JMATS employees.
4. The contractual-bargaining unit at the Employer's Little Rock Air Force base facility represented by the IAM is clarified to include the following classifications working on the JMATS program: simulator technician III lead, simulator technician III, simulator technician II, and the material coordinator.
5. The Association seeks to represent certain employees of the Employer and desires certification.
6. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
7. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

INCLUDED: All pilot instructors and loadmaster instructors employed by the Employer at its Little Rock Air Force Base facility.

EXCLUDED: All office clerical and professional employees, guards and supervisors as defined in the Act and all other employees represented by another labor organization.

The classification of scheduler/librarian is neither included nor excluded from this unit because there is insufficient evidence to determine if this classification shares a community of interest with other unit employees. Rather, the individual holding that position will be permitted to vote by a challenge ballot. In addition, the lead pilot instructor will vote by a challenge ballot because the evidence is insufficient to determine whether he is a supervisor within the meaning of Section 2(11) of the Act.

V. DIRECTION OF ELECTION

Upon final disposition of Case 26-CA-21497, the National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate. Inasmuch as the IAM has not previously been given notice that it must submit a showing of interest other than its contract in order to be on the ballot, and as its contract is not sufficient to serve as a showing of interest regarding the unit in which the election is directed, the IAM has 48 hours after final disposition of Case 26-CA-21497 to provide evidence of a showing of interest in the unit in which the election is directed. If such a showing is provided, the employees will vote whether they wish to be represented for purposes of collective bargaining by Little Rock Association of Instructors, Technicians, and Support Personnel, or by International Association of Machinists and Aerospace Workers, AFL-CIO, or by neither. If such a showing is not provided, the

employees will vote whether or not they wish to be represented for purposes of collective bargaining by Little Rock Association of Instructors, Technicians, and Support Personnel. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that began less than 12 months before the election date and who retained their status as such during the eligibility period, and the replacements of those economic strikers. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be

used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, 1407 Union Avenue, Suite 800, Memphis, TN 38104, on or before **March 19, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (615) 736-7761 or at (901) 544-0008 or may be sent by e-mail to Resnash@nrlb.gov or Region26@nrlb.gov. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **three** copies, unless the list is submitted by facsimile or e-mail,

in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VI. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **March 26, 2004**. The request may **not** be filed by facsimile.

Dated at Memphis, Tennessee, this 12th day of March 2004.

/S/

Ronald K. Hooks, Regional Director
Region 26, National Labor Relations Board
1407 Union Avenue, Suite 800
Memphis, Tennessee 38104-3627

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